REMARKS

Upon entry of this paper, claims 1, 2, 4-10, 14-20 and 27-36 will be pending in this application. By this paper, claims 1, 5, 27, and 34 have been amended. Claims 35 and 36 are newly added. Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

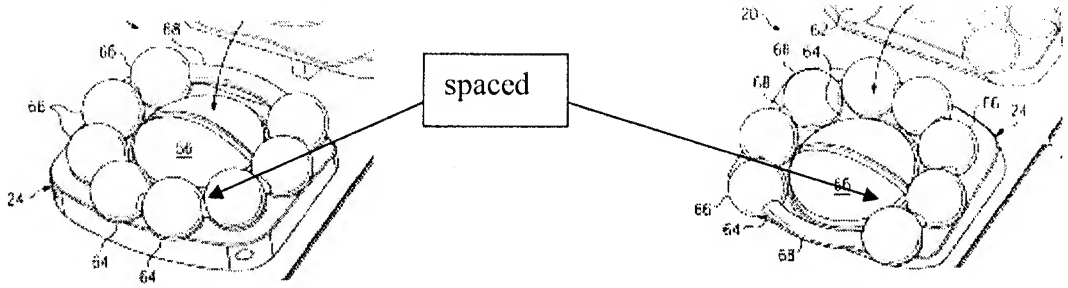
Support for Claim Amendments

The Advisory Action dated February 1, 2010 stated that the proposed amendment of "spaced" lacks written description support.

The MPEP states compliance with the written description is answered in response to the question , "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." MPEP 2163.02.

Here, the specification provides support for the claimed features. Particularly, it provides support for "spaced motion-controlling members" and "the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members," as recited in claim 1.

First, the spaced motion controlling members are shown as "spaced" in the drawings. For example, Figs. 8 and 4, partially reproduced below, show that the motion controlling members are spaced.



Second, the specification provides support for the elongated member "maintaining the spacing." For example, paragraph [0025] of the specification states the cord "maintain[s] the placement during insertion." Paragraph [0030] states that cord "helps to keep the device 20 in proper arrangement while it is being inserted into place," and that the cord can "prevent excessive translational movement."

A person of ordinary skill in the art would read these statements, and taken in context with the drawings, would recognize that the Applicants of the present application invented at least the recited subject matter of "spaced motion-controlling members" and "the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members," as in claim 1.

Accordingly, Applicants respectfully submit that the recitations of "spaced" in the claims is supported by the specification in compliance with 35 U.S.C. §112.

Compliance with 35 U.S.C. §103

Independent claims 1, 5, 27, and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication 2004/0093082 to Ferree in view of U.S. Patent 6,387,130 to Stone et al. ("Stone") and in view of U.S. Patent No. 6,419,706 to Graf. Applicants traverse the rejection with respect to the claims as amended for the reasons subsequently set forth herein.

Independent claim 1

Claim 1 now recites:

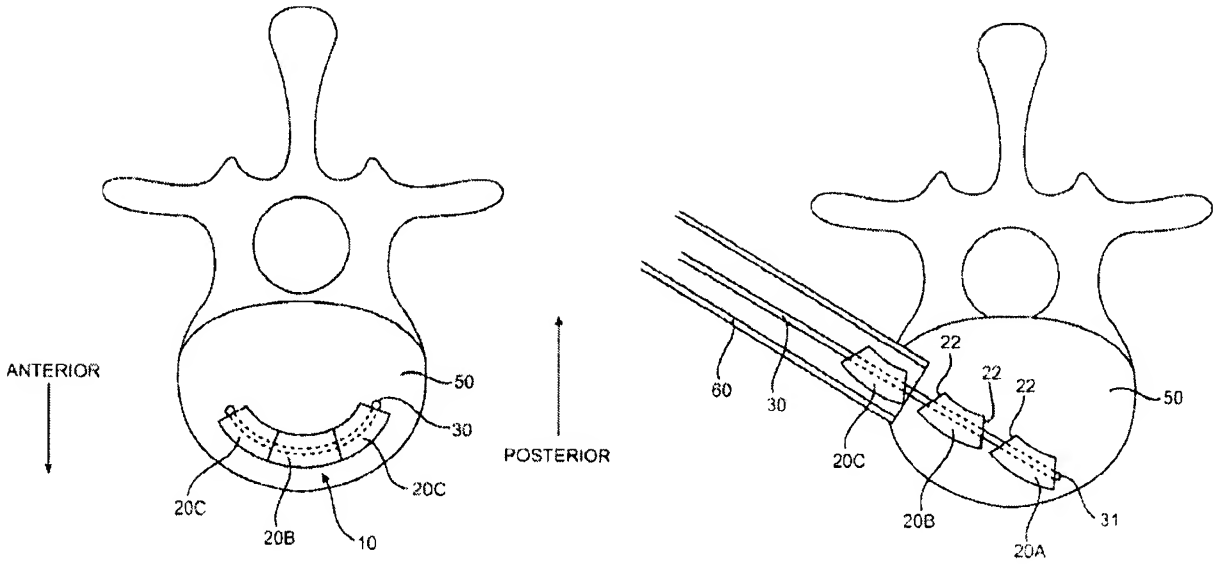
> A motion-preserving implant device comprising:
> a first plate comprising an outer surface for engaging with a first bone and an inner surface including both a plurality of first recessed surfaces and a concave articulation surface, the plurality of first recessed surfaces spaced outwardly apart from the concave articulation surface in a circumscribing relationship therewith;
> a second plate for engaging with a second bone, the second plate comprising a plurality of second recessed surfaces;
> a convex articulation member positioned entirely between the two plates and in direct and slidable contact with the concave articulation surface;
> a plurality of spaced motion-controlling members each extending between an opposing pair of the first and second recessed surfaces, wherein the articulation member is separate from and stiffer than the motion-controlling members; and
> an elongated member connected to and joining the plurality of motion-controlling members, the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members.

By this paper, Applicants have more particularly described the elongated member in claim 1. Claim 1 now recites, "the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members." Support for the amendment is found in the specification at least at paragraphs [0025] and [0030] of the published specification and the drawings.

The Office Action relies upon Stone for a teaching of a cord. The Response to Arguments section of the Office Action states that the implants in Stone come to rest against the knot 31 and they are then "pushed tightly together so that their angled ends will abut against one another, causing assembly (10) to form a curved C-shape as shown in Fig. 1." Office Action, p.6, quoting Stone, columns 3-4. However, neither the knot 31 nor any other portion of the elongated member 30 *maintains the spacing* of a plurality of *spaced motion controlling members* as recited in claim 1.

First, resting the Stone implants against the knot does not maintain the spacing between spaced members as claimed because the Stone implants freely slide until they abut. Second, abutting the implants to form a C-shape as in Stone is not maintaining spacing as claimed because there is no space between the implants.

Instead of teaching or suggesting an "elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members," Stone teaches advancing a plurality of intervertebral implant pieces over an elongated member so that they can abut each other to form a curved assembly in an intervertebral disc space. Figs. 1 and 3 from the face of the Stone patent are reproduced below.



Because the combination of references fails to tech or suggest an "elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the spaced motion controlling members," claim 1 is in condition for allowance. Applicants respectfully request that the Examiner withdraw the rejection and pass claim 1 to allowance.

Independent claims 5, 27, and 34

Independent claims 5, 27, and 34 are amended to include language similar to the claim 1 amendment. Accordingly, Applicants traverse the rejections with respect to the claims as amended and submit that these claims should be allowable for the reasons discussed above. Applicants respectfully request that the Examiner withdraw the rejection and pass these claims to allowance.

Dependent Claims 2, 4, 6-10, 14-20, and 28-33

Dependent claims 2, 4, 6-10, 14-20, and 28-33 depend from and add additional features to their respective independent claims. These claims are deemed to be patentable over the prior art for at least the reasons the independent claims are allowable over the cited references.

New Claims

Claims 35 and 36 are newly added and both teach subject matter neither taught nor suggested in the cited references. For example, new claim 35 recites "a plurality of motion-controlling members each extending between an opposing pair of the first and second recessed

surfaces, the motion-controlling members being distributed substantially on three sides of the convex articulation member, a fourth side being devoid of motion-controlling members such that the motion controlling members are non-symmetrically distributed about the convex articulation member." The Office Action relies upon Ferree for a teaching of motion-controlling members. However, Ferree teaches only symmetrically disposed cushioning members. Accordingly, applicants respectfully request that the Examiner consider these claims and pass them to allowance.

Conclusion

An early formal notice of allowance of claims 1, 2, 4-10, 14-20 and 27-36 is requested. The Examiner is invited to telephone the undersigned if further assistance is necessary. The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-1394.

Respectfully submitted,

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Certificate of Service

I hereby certify that this correspondence is being file with the United States Patent and Trademark Office via EFS-Web on February 22, 2010.

Crystal French